ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	CC Docket No. 96-98

REPLY COMMENTS OF SPRINT CORPORATION

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I. INTRODUCTION AND SUMMARY

Thousands of pages of initial comments were filed by well over 150 parties in response to the NPRM in this docket. In the brief amount of time and space permitted -- for good reason, given the tight statutory deadline for Commission action -- for reply comments, Sprint focused primarily on those parties whose economic interests will be most directly affected by the outcome of this proceeding: the major IXCs, LECs and CAPs. For even this limited set of parties, it would be impossible to address every issue and argument raised, and Sprint does not attempt to do so here. There may be many worthy proposals that Sprint does not address, just as there are many spurious arguments that Sprint does not rebut.

Not surprisingly, there is no consensus on any major issue in this proceeding. Even the other parties that share Sprint's view that the Commission's policies should encourage facilities-based local competition do not always agree with

Sprint on the best means to that end. Although Sprint has further refined some of its positions in light of comments of other parties, Sprint has not changed, in any fundamental respect, the positions taken in its initial comments.

Sprint approaches these complex issues as a corporation whose operations include the largest local exchange system other than the RBOCs and GTE, the third largest long distance carrier, and a significant partnership stake in the largest PCS licensee; in addition, Sprint intends to be a major force in competitive local exchange operations. These diverse internal perspectives do not guarantee that Sprint's positions are correct or in the public interest, but they do provoke considerable internal debate and discussion, and result in an outcome that, in Sprint's view, fairly accommodates the legitimate interests and concerns of these divergent business units. Thus, it may be useful to compare Sprint's positions with those of the RBOCs and the major IXC parties.

There are four principal areas of disagreement between Sprint and the other major IXCs. Sprint does not believe that interconnection under §251(c)(2) provides an automatic and comprehensive alternative to existing interstate access charges. Nor does Sprint share the view of some IXCs that deep wholesale discounts for resale services are warranted under the "avoided cost" standard of §251(d)(3) of the Act. With respect to the unbundling of network elements, Sprint

does not favor a requirement for sub-loop unbundling at the outset; Sprint also does not support the "platform" concept for local switch unbundling, but instead believes the Act requires vertical features (such as custom calling services) to be made available through the resale option provided by §251(c)(4). Finally, Sprint does not endorse the Hatfield Study, widely accepted by other IXCs, for pricing interconnection and unbundled network elements, and believes that some allowance for shared costs should be included in those prices.

On the other hand, Sprint shares a common view with other IXCs that the Commission must take a leadership role in promulgating explicit national standards for implementing §§251 and 252. We agree that IXCs can self-provide access, at cost-based rates, by entering the local market through the purchase of unbundled network elements under §251(c)(3), and that this alternative to existing access charges compels prompt and comprehensive reform of the Commission's current access charge structure. We concur in TSLRIC as the proper starting point for pricing interconnection and unbundled network elements under §252(d)(1), and in the interim use of bill-and-keep for terminating interconnected local traffic. Although we disagree on the level of the resale discount, we agree that resale should essentially be unrestricted. And finally, we share the view that access to the ILECs' back-

office systems through electronic bonding must be ordered in this docket.

Although Sprint agrees with the RBOCs on the level of the wholesale discount and on certain aspects of network unbundling, the totality of the RBOC positions in this docket would doom local competition to failure. Procedurally, the RBOCs would have the Commission step aside, leaving would-be competitors at the mercy of negotiations with incumbent monopolists to determine the substantive technical and economic terms for interconnection. The results of these negotiations would be arbitrated, reviewed and litigated in 50 different jurisdictions, resulting in balkanized interpretations of fundamental provisions of the Act, and burdening CLECs with the time and expense of fighting multi-front wars on each and every issue. Substantively, the RBOCs would impose improper preconditions on requests for interconnection and for the unbundling of network elements, and would restrict the use of unbundled elements to forestall any immediate threat to their above-cost revenues from access. Likewise, the RBOCs propose pricing standards for interconnection, unbundled network elements and reciprocal compensation that are designed to leave them at least as well off after "competition" is permitted as they are today. They argue for the ability to charge CLECs higher rates than those charged to other ILECs today for identical services. Finally,

the RBOCs seek so many exceptions to their resale obligations that those obligations would be nullified in practical terms.

Sprint well understands the threat to the RBOCs' comfortable status quo that Sprint's more balanced and reasoned approach to §§251 and 252 entails. The positions Sprint advocates, if adopted, will not be without pain to Sprint and other ILECs. However, Sprint believes that if local competition, as envisioned by the 1996 Act, is to become a reality, it must come at a price, and Sprint is prepared to pay that price. Sprint is confident that well-managed ILECs not only can survive the emergence of competition on fair terms, but also will be able to participate fully in the accelerated growth that a truly competitive environment will foster.

As was the case with our initial comments, these reply comments will track the issues as outlined in the NPRM.

II. PROVISIONS OF SECTION 251

A. Scope of the Commission's Regulations

Whether or not the Commission should issue explicit rules of nationwide applicability is an issue of policy, not law.[1]

[1] On this and other issues, the Commission should be wary of arguments that rely on the provisions of either the House or Senate predecessors of the 1996 Act. As the Commission is well aware, the bill that emerged from the Conference Committee was not the usual compromise between Senate and House bills, but instead represented a substantial change, from each chamber's bill, in a direction that was far more favorable to the interests of local competition and the

Clearly, Congress has endowed the Commission, through §251(d)(1), with plenary authority to issue regulations carrying out the requirements of §§251 and 252.

Those who take the position that the Commission should do little in the way of adopting explicit and detailed standards are generally state regulatory commissions and ILECs. Just as ILECs must adapt to a new competitive environment, the state commissions must adjust to the new regulatory paradigm created by the 1996 Act. However, this paradigm by no means freezes the state commissions out of the process or relegates them to a role of secondary importance. No matter how detailed the Commission's initial rules may be, they will leave much work of crucial importance to the states.

Under Sprint's proposals, for example, states will have to resolve controversies over the technical feasibility of providing any points of interconnection or unbundled network elements over and above the minimum set we ask this Commission to prescribe. The states will also be responsible for taking abstract costing principles, such as TSLRIC, and translating them into dollar-and-cent rates. The states will undoubtedly be called upon to mediate and arbitrate numerous disputed

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interexchange industry than either the House or Senate bills had been.

issues between CLECs and ILECs, and must act within narrowly prescribed statutory time limits.

At the same time as they undertake these tasks, the states will have to address their role in preserving universal service under §254 of the Act, and, as a practical matter, will have little choice but to simultaneously consider rebalancing of local service and other intrastate rates. In short, the states will have their hands full, and whatever the Commission's rules can do to narrow the range of controversies before the states should redound to the benefit of all interested parties, including the state commissions themselves.[2]

The states also have a full opportunity to shape the Commission's policies through their comments and reply comments in this docket, and will have the opportunity to urge refinements to those policies on a continuing basis, based on both their new ideas and their experience in carrying out the important tasks entrusted to them.

The RBOCs' opposition to detailed and explicit Commission rules is more transparent in its purpose. Rather than having to follow prescribed standards found to be in compliance with the underlying purposes of the Act, they wish to be free to

[2] In fact, the North Dakota Public Service Commission (at 1) has acknowledged that, with its small staff and lack of experience in dealing with interconnection issues, it needs specific standards from this Commission.

rely on negotiations between themselves and would-be competitors to determine how and on what terms the local market should be opened to competition, and to force those competitors to litigate unfavorable results in as many jurisdictions as possible.

The Commission's tentative conclusion that it would be unwise to take such an approach has the solid support of the Department of Justice (at 9-10, footnote omitted):

> There is no basis in economic theory or in experience to expect incumbent monopolists to quickly negotiate arrangements to facilitate disciplining entry by would-be competitors, absent clear legal requirements that they do so. Negotiations between incumbent monopolists and new competitors over access and interconnection have frequently been prolonged and difficult, replete with claims that the incumbent has engaged in delaying tactics, and in the end regulatory or other legal intervention has commonly been necessary to reach a satisfactory result.

Likewise, the Justice Department endorses, in the strongest possible terms, the promulgation of national standards by this Commission (at 11-12, footnote omitted):[3]

> But in order to implement effectively this scheme, the specific obligations of the ILECs must be made clear, and must be made clear quickly. As the Commission suggests (Notice ¶31), clear national standards, by narrowing the range of permissible outcomes, will reduce the ILECs' ability to use their superior bargaining position to retard competitive entry.

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[3] See also, id. at 12-14 (discussing other policy reasons favoring adoption of explicit national rules).

> Without clear national standards, the outcome of the negotiation and arbitration process established by section 252 will differ from state to state, and will be more difficult to predict. Entrants will be required to litigate the same issue in state after state, adding substantially to the time and cost of entry, and creating uncertainty that may impede investment. The absence of clear rules would also compound the complexity of the arbitration task that individual states would confront in the absence of Commission guidance. Even if each state ultimately reaches the "right" outcome, the uncertainty inherent in such state-by-state regulatory decision-making will seriously delay and impede entry. And recognizing these facts, ILECs will have substantially greater incentives to delay and litigate, rather than negotiate reasonable arrangements with entrants.

The Justice Department's endorsement of the Commission's leadership role in implementing the 1996 Act should provide the Commission with considerable comfort that it is on the right course.

Pacific Bell (at 2-3) advocates adoption of what it terms "safe harbors," which it defines (at 2) as "outcomes that are reasonable and sufficient to satisfy Section 251 requirements but not the exclusive means to do so." These safe harbors would also be deemed to satisfy the checklist items in §271. If it were possible to establish comprehensive standards for complying with §251, including specification of prices, Pacific's suggested safe harbors could be employed. However, if (as Sprint believes) the Commission has little choice for now but to specify minimum standards and general pricing

guidelines, the determination of whether a carrier has complied with §§251 and 271 will necessarily be incapable of determination in advance. For example, if the Commission adopts a minimum list of unbundled network elements, and no party requests any additional unbundling, a carrier offering the minimum set of unbundled elements could fairly be said to comply with §251(c)(3), assuming that those elements are reasonably priced and offered on nondiscriminatory terms that also comport with the equal-in-quality requirement. However, if an ILEC refuses to provide a technically feasible unbundled element, its offer to provide the minimum set of elements would not satisfy its obligations under §251. As long as the telecommunications network and technology evolve, compliance with the interconnection and unbundling standards will necessarily evolve as well, and thus, as a practical matter, Sprint does not believe the Commission will ever be in a position to promulgate a list of "safe harbors."

A more useful, but still premature, concept is TCG's proposal (borrowed from the California PUC) to employ "preferred outcomes" -- i.e., explicit requirements that would apply in the event that negotiations fail. See TCG at 14-17. Certain elements of Sprint's proposals could be viewed as such a "preferred outcome."[4] However, for many of the requirements

[4] For example, Sprint proposes the use of bill and keep arrangements to satisfy the reciprocal compensation obligations for termination of interconnected local traffic

under §251, it would be impossible for the Commission, at the outset, to adopt a comprehensive set of such default standards. It may be that after some experience with case-by-case litigation of such issues as network unbundling beyond the initial minimum requirements, pricing of unbundled network elements, and establishing the wholesale discount for resale purposes, a clear consensus may emerge as to what constitutes reasonable default positions. However, for the present, Sprint sees little alternative to the establishment of minimum standards and carrying out those standards through case-by-case adjudication.

B. Obligations Imposed by Section 251(c) on "Incumbent LECs."

1. Duty to Negotiate in Good Faith

There are two issues raised in this portion of the NPRM that Sprint wishes to discuss briefly in these reply comments: rules delineating conduct that can be regarded as evidence of "bad faith," and whether pre-existing agreements between ILECs are subject to provisions of §§251 and 252.

With respect to the first issue, Sprint remains of the view (Comments at 10-12) that it is not possible to comprehensively delineate, in advance of a concrete factual context, all courses of conduct that constitute bad faith.

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for an interim two-year period, but would permit the carriers to agree on a different reciprocal compensation arrangement.

However, Sprint believes that several of the tactics described by AT&T in bullet-form (at 87-88) can be added as proscriptions in the rules.[5] Specifically, the first five bullet points are explicit enough that they can be incorporated in the Commission's rules.[6] In addition, the seventh point -- failure to confer binding authority on the negotiator -- could be added as well, if a caveat is included to account for unforeseen circumstances.[7] However, the other two bullet points, although well-intentioned, are too ambiguous to be adopted as rules.[8]

With respect to the applicability of §§251 and 252 to pre-existing ILEC-to-ILEC agreements, Sprint's position is

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[5] Draft proposed rules were attached to Sprint's May 20 further comments in this proceeding.

[6] In the first bullet point, AT&T would preclude an ILEC from insisting that the other party be "certified" by the state before agreeing to begin negotiations. While Sprint shares AT&T's views that such a requirement is unreasonable, in order to relieve ILECs of the burden of having to negotiate with parties who may not have a serious interest in entering the local market, it would be reasonable for an ILEC to refuse to commence negotiations with any party that is not currently operating as a telecommunications carrier or that has not applied for a license to do so in the state in question.

[7] There may be cases in which an unforeseen issue arises for which the negotiator may legitimately be unprepared, either as a matter of expertise or authority, to make a binding commitment.

[8] For example, what constitutes "a reasonable time" or "delays" may vary with the size of the ILEC, the nature of the request, and the number of other parties simultaneously seeking to negotiate with that carrier.

that such agreements are covered by the Act, but that the Commission and state regulators should recognize that many such agreements were negotiated under a different legal and regulatory framework, and that the ILECs should have a reasonable opportunity to renegotiate such agreements. Thus, Sprint proposed (at 12-13) that while all such agreements should be promptly and publicly filed, parties should be given up to six months to renegotiate the terms of those agreements before having to make their terms available to other carriers.

Some of the RBOCS take the position that agreements with neighboring, non-competing LECs fall outside the scope of §§251 and 252, because those sections are directed only at competitive local service.[9] The simple answer to this contention is that by opening the local market to competition, the 1996 Act makes it impossible to distinguish between "non-competing" and "competing" LECs. While two neighboring LECs may have had defined franchise territories in the past and were precluded by law from competing against each other, any LEC can now take advantage of business opportunities in adjacent territories served by another LEC.[10]

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[9] E.g., BellSouth at 64, NYNEX at 25-28, and USTA at 67-70.

[10] Only if two carriers formally agreed not to compete with each other -- an agreement that itself would raise antitrust issues -- could one distinguish between "non-competing" and "competing" LECs.

Furthermore, exempting existing ILEC-to-ILEC agreements from §§251 and 252 would create opportunities for discrimination against CLECs. A CLEC might be forced to pay an ILEC far higher rates than a "neighboring" ILEC does for transport and termination of calls. And since the CLEC's local calling area may overlap those of both ILEC parties to the pre-existing agreement, the CLEC would be placed at a direct competitive disadvantage vis-à-vis the "neighboring" ILECs. Sprint's proposal to afford a six month period for renegotiation of pre-existing agreements before requiring that their terms be made available to other carriers gives appropriate recognition to both the past reality that such agreements were negotiated under a different legal and competitive milieu, and the present reality under the 1996 Act that the local market has been opened to competition and ILECs must treat all carriers nondiscriminatorily.

2. Interconnection, Collocation, and Unbundled Elements

a. Interconnection

(1) Technically Feasible Points of Interconnection

and

c. Unbundled Network Elements

(2) Access to Network Elements

Sprint (at 14-15 and 28-29) proposed that the Commission promulgate a minimum number of technically feasible points of interconnection and unbundled network elements, leaving to the states the determination of whether interconnection should be required at additional points, or additional unbundled network elements be provided, under guidelines that would require the requesting carrier to identify with specificity the desired point of interconnection or network element, then shift the burden of proof to the ILEC to demonstrate that the requested point of interconnection or unbundled element was not technically feasible. Several issues regarding the "technically feasible" standard and the request process merit further comment.

First, it is apparent that the Commission needs to adopt a definition of "technical feasibility" in order to minimize the scope of disputes between ILECs and other carriers. Sprint proposes that the Commission define "technically

feasible" as "possible to accomplish without a scientific or technological breakthrough, i.e., without an advance in the state of the art."

Many ILECs, by contrast, read glosses into "technically feasible" that would unduly restrict the availability of unbundled network elements and interconnection. For example, SBC (at 25) and U S West (at 48-49) both argue that "technically feasible" must mean more than simply "technically possible" and attempt to insert costs -- i.e., economic feasibility -- into the meaning of "technically feasible". Their reading is not supportable in either respect.

The first definition of "feasible" in Webster's Third New International Dictionary (unabridged) (1976) is "capable of being done, executed, or effected : possible of realization," and that dictionary refers the reader to "possible" for a list of synonyms. In short, "feasible" means nothing more than "possible". One of the criteria proposed by SBC (at 27) for judging "technical feasibility" is "[a]bility of support systems to administer, provision, maintain and order without unique or special handling and/or billing." This criterion seems to suggest that products available off-the-shelf today are the only ones that are "technically feasible" and thus is unduly restrictive. For example, it is natural to expect that back-office administrative, maintenance, ordering, and billing systems may have to be modified in order to accommodate the

unbundling of an element of their existing networks. Such changes are inherent in offering an element that has never before been unbundled from the network. Indeed, it may be reasonable to require an ILEC to add new types of equipment or capabilities to its network, so long as the requesting carrier compensates the ILEC for the requested network modification.

Moreover, contrary to SBC and US West, cost has nothing to do with technical feasibility. Although the ILEC is entitled (subject to the standard of §252(d)(1)) to recover the costs of interconnection or the provision of an unbundled element, whether the request is economically sound is a matter for the requesting carrier to decide. If a CLEC chooses to purchase an unbundled network element that is not cost effective, it will be economically punished in a competitive market. However, the concept of "technical feasibility" should not be expanded into "economic feasibility" in order to protect competing local carriers from making bad business decisions (or from allowing ILECs to interpose their views on what constitutes a bad business decision in order to restrict the availability of a requested element).[11]

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[11] Sprint agrees with U S West (at 50-52) that sub-loop unbundling could impose substantial additional costs on the ILEC for administration, billing and maintenance, and that the cost of the sum of the unbundled elements of a loop would exceed the cost of the loop. It was for that reason that Sprint proposed that sub-loop unbundling not be required at the outset, but rather left to the request process, so that ILECs would not have to incur these costs throughout their systems regardless of whether a market demand for the sub-loop

In this regard, USTA's proposal to require the requesting carrier to place a firm order for a specified quantity of the requested interconnection element, or instead to pay the ILEC's cost of processing the request, is clearly overreaching. It is unreasonable to expect the requesting carrier to make a firm commitment until it knows what the price will be, and USTA's proposal to require the requesting carrier to pay the costs of processing the request would be ripe for abuse by ILECs.

USTA's concomitant proposal (at 14-15) to require the requesting party to provide the same interconnection or unbundled element on a reciprocal basis should also be rejected. As DOJ agrees (at 22-23), this proposal would unwarrantedly saddle all local telecommunications carriers with burdens that were specifically reserved for ILECs under §251(c) of the Act.

On the other hand, it is reasonable to require the requesting carrier to include, as part of its request, technical information and projected demand quantities, as proposed by USTA at 14. Such information may be necessary to allow the ILEC to estimate the cost of providing the interconnection or network element, particularly if fixed

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elements ever emerged. However, contrary to U S West (at 49-50), this does not imply that sub-loop unbundling is not technically feasible and that such unbundling should not be provided to a CLEC that is willing to pay the price.

costs, that should be spread over units of demand, are involved.

Sprint also supports, in concept, USTA's suggestion (at 15) that ILECs should "promptly" process bona fide requests for additional points of interconnection or network elements. However, Sprint does not believe it is feasible to specify a period of time that would always be fair to both parties. The 90-day period suggested by USTA may give an ILEC far too much time to respond to a relatively straightforward request from a single carrier. On the other hand, if an ILEC is inundated with a large number of requests for many different network elements, 90 days may be insufficient. In any event, the mediation and arbitration provisions of §252 should allow the requesting carrier to bring the state commission into the loop (no pun intended) if the ILEC appears to be dragging its feet.

a. Interconnection

(3) Interconnection that is Equal in Quality

In Sprint's initial comments (at 17-19), it argued that "electronic bonding" -- mainframe-to-mainframe access to ILEC back office systems -- was necessary in order to fulfill the statutory requirements that interconnection be equal in quality to that which the carrier provides itself and to comply with the nondiscrimination provisions of the Act. There is widespread support for this concept in the comments

of other parties.[12] MCI and TCG propose electronic bonding as a required unbundled network element. Sprint believes their position is meritorious, but remains of the view that electronic bonding also should be considered part of the equal-in-quality and nondiscrimination obligations, and that those obligations will not be satisfied until electronic bonding has been provided in accordance with industry standards. Thus, even if electronic bonding is included in the minimum set of unbundled elements, the Commission should direct the industry to formulate standards for electronic bonding within a prescribed period of time (one year after its order in this docket)[13] and require implementation of those standards by ILECs within one year thereafter. If left to the bilateral negotiating process, the means of implementing these electronic interfaces could vary from ILEC to ILEC (and possibly from state to state for any given ILEC), which would unnecessarily complicate the back-office systems of CLECs operating in many different locales.

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[12] See e.g. AT&T at 33-39; MCI at 13-14, 19; CompTel at 38-39; TCG at 38-39; and Telecommunications Carriers for Competition at 54-60.

[13] In this regard, the specifications attached as Appendix D to the comments of the Telecommunications Carriers for Competition should be useful in focusing the industry on standards for electronic bonding.

(2) Just, Reasonable and Non-Discriminatory Interconnection

and

(4) Relationship Between Interconnection and Other Obligations Under the 1996 Act

In its comments (at 19), Sprint agreed with the Commission's tentative conclusion that it had authority to require meet point interconnection arrangements. TCG (at 26-27) also supports the Commission's tentative findings and more specifically argues for a "mid-span" meet arrangement, in which the two carriers' fiber optic cables would be spliced together at a point between two repeaters. TCG proposes that ILECs interconnect, using a mid-span meet arrangement, at any point chosen by the requesting carrier, and that the cost of the interconnection facility be shared between the two carriers, based on the proportion of the facility provided by each carrier. However, TCG would limit the ILEC's cost-sharing obligation to one-half of the first three miles from the ILEC switch location to which interconnection has been requested, in order to encourage CLECs to deploy facilities and utilize diverse routings.[14] Sprint endorses TCG's mid-

[14] As we understand TCG's proposal, the requesting CLEC would be responsible for all the costs of getting to a point within three miles of the ILEC's switch, for purposes of exchanging traffic at that meet point.

span approach and cost-sharing as a reasonable accommodation between the interests of CLECs and ILECs.

Contrary to MCI's proposal (at 42-46), Sprint does not believe that transport should be bundled with call termination for local interconnected traffic. Since transport is a "make or buy" decision for the CLEC, charges for transport should be separated from termination (i.e., end office switching). Thus, a CLEC should be free to establish as many (or as few) points of interconnection with an ILEC as it wishes, depending on how much or little transport it wants to self-provide or buy from the ILEC.

b. Collocation

While Sprint supports retaining the standards governing physical and virtual collocation established in CC Docket No. 91-141, it opposes, at this time, the comprehensive revisions of those standards advocated by AT&T (at 38-42) and MFS (at 24-36). Given the tasks that lie ahead in the next two months, there are far more important matters for the Commission to address in its initial rules than further elaboration on, or reconsideration of, its previously adopted collocation policies.

However, if and when it considers revisions of its collocation standards, the Commission should bear in mind that the collocation required in §251(c)(6) is for interconnection